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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,399	09/26/2006	Shaow Lin	DC10103 PCT1	9226

7590 08/21/2009
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EXAMINER

LOEWE, ROBERT S

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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08/21/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/594,399	Applicant(s) LIN ET AL.	
	Examiner ROBERT LOEWE	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 16, 17 and 19 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicants amendments, filed on 6/1/09, canceled previously rejected claims 13, 14, 19 and 20, leaving previously allowed claims 11 and 16-19. However, upon further examination of the instant claims, it is believed that claims 11, 16, 19 and 20 may be rejected as described below. The Examiner apologizes for the previous indication of allowed subject matter.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 11, 16, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cen et al. (US Pat. 6,632,420) in view of Tsubaki et al. (US Pat. 5,472,686).

Claim 11: Cen et al. teaches a process for making a clear personal care product in the form of a microemulsion (claim 38 of Cen et al.) comprising mixing water (6:59), an alcohol

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(6:65-67) such as ethanol (6:61), and an AB-type silicone polyether (5:21-23). Cen et al. further teaches mixing the ingredients to form a microemulsion (example 2).

Cen et al. does not teach that the silicone polyether graft copolymer is of the $(AB)_n$ type of instant claim 11. However, Tsubaki et al. does explicitly teach $(AB)_n$ block silicone polyether copolymers which have the structural limitations of instant claim 11 [reaction (a) at the bottom of columns 3 and 4]. Cen et al. and Tsubaki et al. are combinable because they are from the same field of endeavor, namely, personal care compositions comprising silicone polyether copolymers. At the time of the invention, a person having ordinary skill in the art would have found it obvious to employ the $(AB)_n$ block silicone polyether copolymers as taught by Tsubaki et al. into the aqueous microemulsions as taught by Cen et al. and would have been motivated to do so because Tsubaki et al. teaches the advantages that the $(AB)_n$ block silicone polyether copolymers have in various cosmetic formulations when compared to the graft silicone polyether copolymers and ABA block silicone copolymers such as those taught by Cen et al. (control examples 9, 12, 13, 16, 18, 20, 22 and 24 of Tsubaki et al.).

Because Cen et al. in view of Tsubaki et al. collectively teach the claimed ingredients of instant claim 11, and further teaches the process limitations of instant claim 11, it follows that the process taught by Cen et al. is capable of forming vesicles. The courts have stated that "Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established." Further, if it is the applicant's position that this would not be the case: (1) evidence would need to be provided to support the applicant's position; and (2) it would be the Office's position that the application contains

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inadequate disclosure that there is no teaching as to how to obtain the claimed properties (i.e., formation of vesicles) with only the claimed ingredients.

Since Cen et al. in view of Tsubaki et al. collectively teach aqueous compositions using the same $(AB)_n$ block silicone polyether copolymers as instant claim 11, it inherently follows that the aqueous dispersions comprise dispersed particles having an average particle size of less than 10 microns.

Cen et al. in view of Tsubaki et al. is believed to render obvious all of the limitations of instant claim 11. While Cen et al. does not teach that removal of the water miscible solvent from the aqueous dispersion, such a step is believed to be inherent based on the future intended use of the compositions taught by Tsubaki et al. Specifically, Cen et al. teaches that the compositions are applied to human skin by applying the antiperspirant composition to the skin (2:45-48). It is the position of the Examiner that applying the compositions taught by Cen et al. to human skin would result in the removal of the more volatile water miscible component from the composition. Instant claim 11 allows for other method steps between step (II) and step (III), such as a step of applying to human skin. Therefore, it is believed that the removal of the water miscible volatile solvent would inherently be achieved when formulating or using the antiperspirant compositions taught by Cen et al.

Claims 16 and 17: Cen et al. further teaches the addition of a volatile methylsiloxane oil to the composition (claim 38).

Claim 19: Cen et al. further teaches that step (I) of instant claim 11 comprises a healthcare active (example 1, AZCH, which is an aluminum salt in the antiperspirant composition of Cen et al.).

Allowable Subject Matter

Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Specifically, none of the above applied references teach or suggest that the volatile siloxane oil is a vinyl functional organopolysiloxane.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT LOEWE whose telephone number is (571)270-3298. The examiner can normally be reached on Monday through Friday from 5:30 AM to 3:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

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like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. L./

Examiner, Art Unit 1796

19-Aug-09

/Randy Gulakowski/

Supervisory Patent Examiner, Art Unit 1796